

AMENDED IN ASSEMBLY MARCH 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2734

Introduced by Committee on Insurance (Assembly Members Perea (Chair), Hagman (Vice Chair), Bradford, Ian Calderon, Cooley, Dababneh, Frazier, Gonzalez, Nestande, V. Manuel Pérez, and Wieckowski)

February 25, 2014

An act to amend ~~Section~~ *Sections 927.2, 1775.1, 10505.1, and 11628* of the Insurance Code, and to amend Sections 12251 and 12260 of the Revenue and Taxation Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2734, as amended, Committee on Insurance. Insurance: ~~prepayment of taxes. omnibus.~~

~~Existing~~

(1) *Existing* law requires every surplus line broker whose annual tax for the preceding calendar year was \$5,000 or more to make monthly installment payments on account of the annual tax on business done during the calendar year, and authorizes the Insurance Commissioner to relieve a surplus line broker of his or her obligations to make monthly payments if the broker establishes to the commissioner's satisfaction that he or she has ceased to transact business in the state, or his or her annual tax for the current year will be less than \$5,000.

This bill would raise the threshold for making monthly installment payments to \$20,000 or more in annual tax for the preceding calendar year, and would authorize the commissioner to relieve a surplus line broker of his or her obligations to make monthly payments if his or her annual tax for the current year would be less than \$20,000.

(2) Existing law exempts nonprofit cooperative assessment associations whose membership and insurance are restricted to members of a labor union from provisions relating to the supervision or regulation of insurance with respect to the provision of job protection benefits to their members. Existing law also prohibits these associations from being a member of the California Insurance Guarantee Association for the purpose of providing insolvency insurance to each member.

This bill would provide that the job protection benefits may include accidental death benefits. The bill would prohibit these associations from being a member of any insurance guaranty association in this state and would require each policy issued in this state pursuant to these provisions to contain a specified notice.

(3) Existing law prohibits, among other things, an admitted insurer that is licensed to issue and is issuing motor vehicle liability policies from failing or refusing to accept an application for that insurance, failing or refusing to issue that insurance to the applicant, or from issuing or canceling that insurance under conditions less favorable to the insured than in other comparable cases because of specified reasons, including, but not limited to, discrimination between persons within the same geographic area. Existing law prohibits the admitted motor vehicle liability insurer from using specified characteristics, including, but not limited to, location within a geographic area, in and of itself, as a condition or risk for which a higher rate, premium, or charge is required of the insured for that insurance. Existing law also requires an admitted insurer, licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both, to submit annually to the commissioner a record of loss experience, as specified, for the geographic area, as defined, including statistical data by ZIP Code area. An insurer may satisfy its obligation to report statistical data by providing its loss experience data and statewide expense ratio and combined ratio on its assigned-risk business to a rating or advisory organization for submission to the commissioner. This data is required to be made public by the commissioner annually after examination.

This bill would instead require an insured to submit the record of loss experience for the geographic area biennially. The bill would also require statewide summary data to be submitted to the commissioner annually. The bill would also require that the reported data be made available to the public biennially.

~~Existing~~

(4) *Existing* law requires insurers transacting insurance in this state whose annual tax for the preceding calendar year was \$5,000 or more to make prepayments of the annual tax for the current calendar year, except as provided. The commissioner is authorized to relieve an insurer of its obligations to make prepayments if the insurer establishes to the commissioner's satisfaction that the insurer has ceased to transact business in the state, or the insurer's annual tax for the current year will be less than \$5,000.

This bill would raise the threshold for making tax prepayments to \$20,000 or more in annual tax for the preceding calendar year, and would authorize the commissioner to relieve an insurer of its obligations to make prepayments if the insurer's annual tax for the current year would be less than \$20,000.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 927.2 of the Insurance Code is amended
2 to read:
3 927.2. (a) (1) By July 1, 2013, each admitted insurer, with
4 California premiums written of one hundred million dollars
5 (\$100,000,000) or more, shall submit a report to the commissioner
6 on its minority, women, and disabled veteran-owned business
7 procurement efforts during the reporting period.
8 (2) The report shall include all of the following:
9 (A) The insurer's supplier diversity policy statement.
10 (B) The insurer's outreach and communications to minority,
11 women, and disabled veteran business enterprises, including:
12 (i) How the insurer encourages and seeks out minority, women,
13 and disabled veteran owned business enterprises to become
14 potential suppliers.
15 (ii) How the insurer encourages its employees involved in
16 procurement to seek out minority, women, and disabled
17 veteran-owned business enterprises to become potential suppliers.
18 (iii) How the insurer conducts outreach and communication to
19 minority, women, and disabled veteran business enterprises.
20 (iv) How the insurer supports organizations that promote or
21 certify minority, women, and disabled veteran-owned business
22 enterprises.

1 (v) Information regarding appropriate contacts at the insurer for
2 interested business enterprises.

3 (C) The report shall include information about which
4 procurements are made from minority, women, and disabled
5 veteran business enterprises with ~~at least a majority of the~~
6 ~~enterprise's workforce~~ *a headquarters' address* in California, with
7 each category aggregated separately, to the extent that information
8 is readily accessible. An insurer may also include other relevant
9 information in the report.

10 (3) An insurer that does not enter into contracts to procure goods
11 or services in California satisfies the requirements of paragraph
12 (2) by filing a statement with the commissioner attesting that it
13 does not enter into procurement contracts in California.

14 (b) Nothing in this section shall be construed to require quotas,
15 set-asides, or preferences in an admitted insurer's procurement of
16 goods or services, nor does this section apply to insurer producer
17 or licensee contracts. Admitted insurers retain the authority to use
18 business judgment to select the supplier for a particular contract.

19 (c) Nothing in this section shall preclude an admitted insurer
20 that is a member of an insurance holding company system, as
21 defined in Article 4.7 (commencing with Section 1215) of Chapter
22 2, from complying with paragraphs (1) and (2) of subdivision (a)
23 through a single filing on behalf of the entire group of affiliated
24 companies.

25 (d) Failure to file the report required by subdivision (a), by July
26 1, 2013, shall subject the admitted insurer to a civil penalty to be
27 fixed by the commissioner, not to exceed five thousand dollars
28 (\$5,000), or if the act or practice was willful, a civil penalty not
29 to exceed ten thousand dollars (\$10,000). An insurer may request,
30 and the commissioner may grant, a 30-day extension to file the
31 report if needed due to unintended or unforeseen delays. If the
32 insurer has failed to file the report within 30 days of a written
33 notice by the commissioner that the insurer has failed to file the
34 report, the commissioner may find that the failure to file the report
35 was willful and increase the civil penalty to an amount not to
36 exceed ten thousand dollars (\$10,000). The penalty imposed by
37 this section shall be enforced by the commissioner and is
38 appealable by means of any remedy provided by Section 12940,
39 or by Chapter 5 (commencing with Section 11500) of Part 1 of

1 Division 3 of Title 2 of the Government Code. This subdivision
2 is the sole means for enforcement of this section.

3 (e) Commencing July 1, 2015, each admitted insurer specified
4 in subdivision (a) shall biennially update its supplier diversity
5 report and submit the new report to the commissioner no later than
6 July 1.

7 (f) By ~~July 31, 2013~~, *September 30 of the reporting year*, the
8 commissioner shall establish and maintain a link on the
9 department's Internet Web site that provides public access to the
10 contents of each admitted insurer's report on minority, women,
11 and disabled veteran-owned business procurement efforts. The
12 commissioner shall include a statement on the department's Internet
13 Web site that the information contained in the insurer's report on
14 minority, women, and disabled veteran-owned businesses is
15 provided for informational purposes only.

16 ~~SECTION 4.~~

17 *SEC. 2.* Section 1775.1 of the Insurance Code is amended to
18 read:

19 1775.1. (a) For the calendar year 1995, and each calendar year
20 thereafter, every surplus line broker whose annual tax for the
21 preceding calendar year was twenty thousand dollars (\$20,000) or
22 more shall make monthly installment payments on account of the
23 annual tax on business done during the current calendar year
24 imposed by Section 1775.5.

25 (b) Notwithstanding any other law, the commissioner may
26 relieve a surplus line broker of his or her obligation to make
27 monthly payments if the broker establishes to the satisfaction of
28 the commissioner that either the broker has ceased to transact
29 business in this state, or his or her annual tax for the current year
30 will be less than twenty thousand dollars (\$20,000).

31 *SEC. 3.* *Section 10505.1 of the Insurance Code is amended to*
32 *read:*

33 10505.1. (a) (1) Any nonprofit cooperative assessment
34 association, the membership and insurance in which are restricted
35 to members of a labor union, is exempt from the provisions of this
36 code relating to the supervision or regulation of insurance with
37 respect to the provision of job protection benefits, *including any*
38 *accidental death benefits*, to its members. A nonprofit cooperative
39 assessment association established pursuant to this section is not,
40 and shall not be, a member of the California Insurance Guarantee

1 Association under Article 14.2 (commencing with Section 1063)
2 of Chapter 1 of Part 2 of Division 1, *or any other insurance*
3 *guaranty association in this state.*

4 (2) *Each policy issued in this state pursuant to this section shall*
5 *contain, in at least 10-point typeface on the front page and the*
6 *declaration page, the following notice:*

7
8 “NOTICE

9 *This policy is issued by a nonprofit cooperative assessment*
10 *association that is not subject to CALIFORNIA insurance laws*
11 *and regulation and is not admitted in California. California*
12 *insurance guaranty funds are not available for your nonprofit*
13 *cooperative assessment association.”*
14

15 (b) “Job protection insurance” means the business of providing
16 indemnity to conductors, engineers, motormen, brakemen,
17 switchmen, firemen, dispatchers, clerks, operators, trackmen,
18 signalmen, and maintenance of way personnel of steam and electric
19 railways and to busdrivers and truckdrivers employed by common
20 carriers for loss of position arising from discharge or suspension,
21 which indemnity is payable in installments that do not exceed the
22 average monthly wage of the insured. “*Job protection insurance*”
23 *may include accidental death coverage insuring the member.*
24 Nothing in this section is intended to regulate or define any benefit
25 delivery system which provides indemnity, as defined in this
26 section, in any manner other than the sale of insurance. Labor
27 unions providing the type of indemnity defined in this section,
28 shall be expressly exempt from any regulation by any state agency.

29 SEC. 4. *Section 11628 of the Insurance Code is amended to*
30 *read:*

31 11628. (a) (1) No admitted insurer that is licensed to issue
32 and issuing motor vehicle liability policies, as defined in Section
33 16450 of the Vehicle Code, shall fail or refuse to accept an
34 application for that insurance, to issue that insurance to an applicant
35 therefor, or issue or cancel that insurance under conditions less
36 favorable to the insured than in other comparable cases, except for
37 reasons applicable alike to persons of every characteristic listed
38 or defined in subdivision (b) or (e) of Section 51 of the Civil Code,
39 including, but not limited to, language, or persons of the same
40 geographic area; nor shall any characteristic listed or defined in

subdivision (b) or (e) of Section 51 of the Civil Code, including, but not limited to, language, or location within a geographic area, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

(2) As used in this section “geographic area” means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for the geographic area shall include the breakdown of actual loss experience statistics by ZIP Code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under 1 ½-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and that are not part of a fleet of five or more motor vehicles under one ownership. A record of loss experience for the geographic area, including that statistical data by ZIP Code area, shall be submitted ~~annually~~ *biennially* to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten. ~~That~~ *The biennial* report shall include the insurer’s statewide loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio on its assigned-risk business. *Statewide summary data shall be submitted annually to the commissioner.* An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data and statewide expense ratio and combined ratio on its assigned-risk business to a rating or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner ~~annually~~ *biennially* after examination. However, the data shall be released in aggregate form by ZIP Code *or statewide basis* in order that no individual insurer’s loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

(3) All information reported to the department pursuant to this subdivision shall be confidential.

(4) As used in this section:

(A) “Language” means the inability to speak, read, write, or comprehend the English language.

(B) “Dependents” shall include, but not be limited to, issue regardless of generation.

(C) “Spouse” shall be determined without regard to current marital status.

(b) The commissioner may require insurers with combined ratios on statewide assigned-risk business that are 10 percent above the mean combined ratio for all plan participants to also report the following:

(1) The reason for the excessive ratio.

(2) A plan for reducing the ratio, and when the reduction can be expected to occur. The commissioner may require insurers subject to this subdivision to provide periodic reports on the progress in reducing the combined ratio.

(c) (1) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, refuse to issue that insurance to an applicant therefor, or cancel that insurance solely for the reason that the applicant for that insurance or any insured is employed in a specific occupation, or is on active duty service in the Armed Forces of the United States.

(2) Nothing in this section shall prohibit an insurer from doing any of the following:

(A) Considering the occupation of the applicant or insured as a condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(B) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section ~~1850~~ 1850.4) of Part 2 of Division 1 and is based upon actuarial data—~~which~~ *that* demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes

1 of compiling that actuarial data for a specific occupation or
2 grouping thereof, a person shall be deemed employed in the
3 occupation in which that data is compiled if any of the following
4 is true:

5 (i) The majority of his or her employment during the previous
6 year was in the occupation.

7 (ii) The majority of his or her aggregate earnings for the
8 immediate preceding three-year period were derived from the
9 occupation.

10 (iii) The person is a member in good standing of a union that is
11 an authorized collective bargaining agent for persons engaged in
12 the occupation.

13 (3) Nothing in this section shall be construed to include in the
14 definition of "occupation" any status or activity that does not result
15 in remuneration for work done or services performed, or
16 self-employment in a business operated out of an applicant's or
17 insured's place of residence or persons engaged in the renting,
18 leasing, selling, repossessing, rebuilding, wrecking, or salvaging
19 of motor vehicles.

20 (d) Nothing in this section shall limit or restrict the ability of
21 an insurer to refuse to accept an application for or refuse to issue
22 or cancel insurance for the reason that it is a commercial vehicle
23 or based upon the consideration of a vehicle's size, weight, design,
24 or intended use.

25 (e) It is the intent of the Legislature that actuarial data by
26 occupation may be examined for credibility by the commissioner
27 on the same basis as any other automobile insurance data ~~which~~
28 *that* he or she is empowered to examine.

29 (f) (1) Except as provided in Article 4 (commencing with
30 Section 11620), nothing in this section or in Article 10
31 (commencing with Section 1861.01) of Chapter 9 of Part 2 of
32 Division 1 or in any other provision of this code, shall prohibit an
33 insurer from limiting the issuance or renewal of insurance, as
34 defined in subdivision (a) of Section 660, to persons who engage
35 in, or have formerly engaged in, governmental or military service
36 or segments of categories thereof, and their spouses, dependents,
37 direct descendants, and former dependents or spouses.

38 (2) The term "military service" includes, but is not limited to,
39 officers, warrant officers, and enlisted persons, officer and warrant
40 officer candidates, cadets or midshipmen at a service academy,

1 cadets or midshipmen in advance Reserve Officer Training Corps
2 programs or on Reserve Officer Training Corps program
3 scholarships, National Guard officer candidates, students in
4 government-sponsored precommissioning programs, and foreign
5 military officers while on temporary duty in the United States.

6 (g) Any person subject to regulation by the commissioner
7 pursuant to this code who fails to comply with a data call required
8 by the department pursuant to subdivision (a) shall be liable to the
9 state for a civil penalty in an amount not exceeding five thousand
10 dollars (\$5,000) for each 30-day period that the person is not in
11 compliance, unless the failure to comply is willful, in which case
12 the civil penalty shall be in an amount not to exceed ten thousand
13 dollars (\$10,000) for each 30-day period that the person is not in
14 compliance, but not to exceed an aggregate amount of one hundred
15 thousand dollars (\$100,000). The commissioner shall collect the
16 amount so payable and may bring an action in the name of the
17 people of the State of California to enforce collection. These
18 penalties shall be in addition to other penalties provided by law.

19 (h) This section shall be known and may be cited as the
20 “Rosenthal Auto Insurance Nondiscrimination Law.”

21 ~~SEC. 2.~~

22 *SEC. 5.* Section 12251 of the Revenue and Taxation Code, as
23 added by Section 13 of Chapter 33 of the Statutes of 2013, is
24 amended to read:

25 12251. (a) For the calendar year 1970, and each calendar year
26 thereafter, insurers transacting insurance in this state and whose
27 annual tax for the preceding calendar year was twenty thousand
28 dollars (\$20,000) or more shall make prepayments of the annual
29 tax for the current calendar year imposed by Section 28 of Article
30 XIII of the California Constitution and this part, provided that
31 prepayments shall not be made with respect to the tax on ocean
32 marine insurance underwriting profit or any retaliatory tax.

33 (b) This section shall become operative on July 1, 2013.

34 ~~SEC. 3.~~

35 *SEC. 6.* Section 12260 of the Revenue and Taxation Code, as
36 added by Section 28 of Chapter 33 of the Statutes of 2013, is
37 amended to read:

38 12260. (a) Notwithstanding any other provision of this article,
39 the commissioner may relieve an insurer of its obligation to make
40 prepayments if the insurer establishes to the satisfaction of the

- 1 commissioner that either the insurer has ceased to transact
- 2 insurance in this state, or the insurer's annual tax for the current
- 3 year will be less than twenty thousand dollars (\$20,000).
- 4 (b) This section shall become operative on July 1, 2013.

O